

## **Intervention: Report by Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions**

- We wish to express our appreciation to SR Christof Heyns for his thoughtful report, and we heartily endorse his efforts to combat and eliminate extrajudicial, summary, and arbitrary executions.
- The United States has consistently and unequivocally condemned extrajudicial, summary, or arbitrary executions against all persons, irrespective of their status. We agree that all States have the obligation to protect human rights and fundamental freedoms and should take effective measures to combat extrajudicial killings and punish the perpetrators.
- With respect to his most recent report, we wish to thank the SR for his thorough review of relevant legislation and practices in 101 countries and territories regarding the use of lethal force during law enforcement operations, in particular police actions during arrests. We found his identification and analysis of the five models of how countries deal with this issue informative. We will carefully review the principles and recommendations he has set out for further consideration.
- We appreciate the report's focus on domestic police powers and the acknowledgement of the fundamental distinctions between the two bodies of international law that may apply to the use of force by governments -- international human rights law governing the use of lethal force in domestic law enforcement situations, and international humanitarian law governing the use of force in armed conflict. We continue to be concerned that the SR has chosen to comment on operations during armed conflict in a manner that obscures this clear distinction and contributes to confusion about the applicable rules.
- We have a number of concerns regarding the SR's "case study" of the operation against Osama Bin Laden, and strongly reject any suggestion that his killing could be considered unlawful.
- The U.S. Attorney General publicly explained earlier this year the legal basis for the operation against bin Laden. In particular, he noted that Bin Laden was the unquestioned leader of an enemy force who continued to plot attacks

against the United States and, therefore, under the law of war, he was a legitimate target in our armed conflict with Al-Qaeda, and targeting him was justified as an act of national self-defense.

- The manner in which the operation was conducted – taking great pains to distinguish between legitimate military objectives and civilians and to avoid excessive incidental injury to the latter – comported with the law of war principles of distinction and proportionality.
- We also strongly disagree with any suggestion that the operation against Bin Laden ruled out the acceptance of surrender. To the contrary, U.S. Forces were prepared to capture Bin Laden, if he surrendered. The laws of war require acceptance of a genuine surrender that is clearly communicated by the surrendering party and received by the opposing force, under circumstances where it is feasible to accept the offer of surrender. Osama Bin Laden did not make such an attempt to surrender, and our forces were authorized to use force against him.
- Finally, we fully acknowledge that the use of force against al Qaeda outside of hot battlefields, such as Afghanistan, is an issue on which there is some disagreement. Nevertheless, the United States does not view its authority to use force in such situations as unbounded, but instead subject to rules of international law that must be assessed on a case-by-case basis. As the Assistant to the President for Homeland Security and Counterterrorism recently reiterated in a speech at Harvard Law School, “International legal principles, including respect for a state’s sovereignty and the laws of war, impose important constraints on our ability to act unilaterally – and on the way in which we can use force – in foreign territories.”

Drafted: L/PM:CPTrumbull; L/HRR:JADolan (x75746)  
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Cleared:

|           |                  |      |
|-----------|------------------|------|
| IO/FO     | SNossel          | (ok) |
| L         | SNBiniaz         | (ok) |
| L/HRR     | EMAswad          | (ok) |
| L/PM      | CPTrumbull       | (ok) |
| L/LEI     | CMJohnson        | (ok) |
| DRL       | JPielemeier      | (ok) |
| IO/HR     | LGambone/EWilcox | (ok) |
| S/SRAP/P  | JMWald           | (ok) |
| S/SRAP/A  | SGuha            | (ok) |
| G         | ERichardson      | (ok) |
| P         | Jyl Kuczynski    | (ok) |
| D(S)      | CNeville         | (ok) |
| S/P       | LBaer            | (ok) |
| DOD/GC    | CAllen           | (ok) |
| DOD:      | TJones           | (ok) |
| NSS/Legal | AHaines          | (ok) |
| NSS       | JCassidy         | (ok) |
| DOJ       | RHigginbotham    | (ok) |